

1
2
3
4
5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 PREPAREME AMERICA LLC,

9 Plaintiff,

10 v.

11 SURVIVAL PREP WAREHOUSE, LLC,
12 et al.,

13 Defendants,

14 v.

15 CHAD E. ALLEN,

16 Third-Party Defendant.

C17-359 TSZ

MINUTE ORDER

17 The following Minute Order is made by direction of the Court, the Honorable
18 Thomas S. Zilly, United States District Judge:

19 (1) Plaintiff's motion for temporary restraining order ("TRO"), docket no. 33,
20 is DENIED. This ruling does not affect plaintiff's motion for a preliminary injunction,
21 docket no. 33, which remains noted for November 17, 2017. On the current record,
22 which presents disputed questions of fact, see Gen. Elec. Co. v. Am. Wholesale Co.,
23 235 F.2d 606, 608-09 (7th Cir. 1956) (cited with approval in Dymo Indus., Inc. v.
Tapeprinter, Inc., 326 F.2d 141, 143 (9th Cir. 1964)), the Court cannot conclude that
plaintiff has shown a likelihood of success on the merits of its currently pleaded
trademark infringement claim. See Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7,
20 (2008); see Stuhlberg Int'l Sales Co. v. John D. Brush & Co., 240 F.3d 832, 839 n.7
(9th Cir. 2001) (the standards for a TRO and a preliminary injunction are equivalent).
The Court also cannot conclude that plaintiff has satisfied the Ninth Circuit's alternative
"sliding scale" standard, which requires "serious questions going to the merits" and a
balance of hardships tipping "sharply" in the movant's favor. Alliance for the Wild
Rockies v. Cottrell, 632 F.3d 1127, 1131-35 (9th Cir. 2011). Plaintiff asserts that

1 defendants are using Amazon Standard Identification Numbers (“ASINs”) associated
2 with plaintiff’s products and/or federally registered trademark PERFECT SURVIVAL
3 KIT. Defendants contend that the ASINs at issue relate to generic, unbranded products,
4 and they deny that the ASINs are linked specifically to plaintiff’s products. The Court
5 need not resolve this factual dispute because, even if plaintiff’s allegations were true,
6 they would not demonstrate trademark infringement. Plaintiff does not claim that
7 defendants call their product a PERFECT SURVIVAL KIT, advertise their product in
8 such fashion, place such brand on their product, or otherwise use the mark (as opposed to
9 ASINs, which are not themselves protected under the Lanham Act) in a manner “likely to
10 cause consumer confusion.” *See Network Automation, Inc. v. Advanced Sys. Concept,*
11 *Inc.*, 638 F.3d 1137, 1144 (9th Cir. 2011).

12 (2) The Clerk is directed to send a copy of this Minute Order to all counsel of
13 record.

14 Dated this 7th day of November, 2017.

15 William M. McCool
16 Clerk

17 s/Karen Dews
18 Deputy Clerk